T5R

No. 25-7373

IN THE SUPREME COURT OF THE UNITED STATES

ATTICUS HEMLOCK,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Counsel for Respondent

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STATEMENT OF THE FACTS

Special Agents Hugo Herman ("Herman") and Ava Simonson ("Simonson") were investigating an alleged conspiracy to kidnap Jodie Wildrose ("Wildrose"), the Under Secretary for Rule Development of the United States Department of Tourism done by Atticus Hemlock ("Petitioner") and Iris Copperhead ("Copperhead"). R. at 52. Pursuant to that investigation, the agents drove to the cabin of Atticus Hemlock's ("Petitioner") and Fiona Reiser ("Reiser"), who were co-residents. R. 52. Before arriving, the agents lacked probable cause to arrest him and only wanted to gather information about his activities at the coffee shop. R. at 23; R. at 52.

The Arrest. On April 2, 2024, at 4:00 P.M., Herman and Simonson arrived their shared cabin. R. 52. Upon arrival, dressed in khakis, a long sleeve polo, and their standard handguns, the agents knocked on the door, prompting Petitioner to answer. R. at 11. The agents introduced themselves, stated they were conducting an investigation which would benefit from information Petitioner has, and asked Petitioner to step outside. R. at 11, 52. Petitioner declined, and the officers spoke with him at the bottom of the cabin steps for the entire encounter. R. at 11, 24, 52.

While speaking with Petitioner, the agents developed probable cause based on various things. R. at 22. First, Herman noticed chloroform bottles on Petitioner's counter and inquired about them Petitioner declined to tell the agents about them and moved in front of them. R. at 11, 52. Agents asked again for him to come outside to answer questions; Petitioner declined. R. at 11. Second, Petitioner—unprompted—asked if the investigation had to do with Jodie. R. at 11, 52. After Petitioner fiercely declined to continue the conversation, Herman and Simonson walked back to their car. R. at 11–12. Based on these observations and two tips suggesting Petitioner and his girlfriend's involvement, the Agents concluded they had probable to arrest him and reapproached the cabin after radioing Special Agent Ristroph ("Ristroph"). R. at 12, 20, 52.

When they reapproached the cabin's steps, Agents Herman and Simonson, with their hands on their weapons, instructed Petitioner to exit the cabin so they could continue their investigation. R. at 12, 52. Petitioner complied and walked out towards the agents. R. at 12. Once Petitioner reached the bottom of the cabin's steps, Agents Herman and Simonson placed him under arrest. R. 12; R. at 23. Once arrested, agents performed a search incident to arrest and found a notebook details plans to carry out Wildrose's kidnapping. R. at 23–24.

The Search of Petitioner's Home. Following Petitioner's arrest, Ristroph arrived on the scene to wait for Reiser, who returned to the cabin twenty minutes later. R. at 13. Ristroph knocked on the door and informed Reiser that Petitioner had been arrested and asked if he could search the cabin as a part of his investigation, to which Reiser consented. R. at 13. Ristroph began searching the shared spaces on the first floor of the cabin. R. at 13. After seeing the staircase on the east side of the living room, Ristroph asked about the space on the second floor. R. at 13, 17. Reiser clarified that Petitioner used the upstairs loft for storage and an office space, so Ristroph limited the search to the shared spaces on the first floor. R. at 13. At the bottom of the staircase, Ristroph saw an unsealed cardboard box with no identifying information on it. R. at 13. He opened the box and found contraband consistent with Petitioner's involvement in the alleged conspiracy. R. at 13–14.

Copperhead's Involvement and Statement. On March 29, 2024, Boerum Village police received a tip about Petitioner and Copperhead in a Boerum Village in a coffee shop scheming for about four hours. R. at 7. On April 2, 2024, while effectuating Petitioner's arrest, Herman seized a notebook detailing Petitioner and Copperhead's joint plans to kidnap Wildrose. R. at 53. Shortly after the agents arrested Petitioner, a local resident ("Kolber"), encountered a frantic Copperhead in Joralemon State Park. R. at 53. Kolber reports hearing her exclaim about not wanting to go to

prison. R. at 53. Later on April 2, 2024, law enforcement arrested Copperhead. R. at 53. That night, Copperhead died in her jail cell from an aortic rupture. R. at 53.

Procedural History. At trial, Petitioner sought to suppress the notebook and the contraband found in the box. R. at 53. The former was based on an alleged Fourth Amendment violation under *Payton v. New York* pursuant to the constructive entry doctrine; the latter was based on a lack of authority Reiser possessed over the box. R. at 53–54. The trial court denied both motions and the Fourteenth Circuit affirmed. R. at 54–57. The Government called Kolber to testify about seeing Copperhead in the woods. R. at 54. The defense attempted to introduce extrinsic evidence to impeach the deceased Copperhead's character. R. at 54. The Government objected and the district court excluded the extrinsic evidence. R. at 54. The Fourteenth Circuit held the trial court properly excluded the evidence and affirmed. R. at 54. Petitioner was convicted of attempted kidnapping of an officer of the United States government on account of the officer's official duties under 18 U.S.C. § 1201(a)(5) and 18 U.S.C. § 1201(d) and sentenced to ten years in prison. On December 2, 2025, this Court granted certiorari.

SUMMARY OF THE ARGUMENT

The Fourteenth Circuit properly affirmed the district court's denial of Petitioner's motion to suppress the notebook by rejecting the constructive entry doctrine. First, under a proper reading of *Payton* and consideration of important policy concerns, Agents Herman and Simonson never physically crossed the cabin's threshold to effectuate Petitioner's arrest when they commanded him to exit and he voluntarily complied. Second, even if this Court adopts the constructive entry doctrine, the agent's conduct did not amount to sufficient coercion to constitute a constructive entry. Thus, this Court should affirm.

The Fourteenth Circuit properly affirmed the district court's denial of Petitioner's motion to suppress when Ristroph did not further inquire into the ownership of the cardboard box because

it was not obvious that it belonged to someone other than Reiser. First, this conclusion aligns with this Court's precedent regarding voluntary consent, reasonable interpretations of consent by law enforcement, and socially accepted manifestations of privacy. Second, adopting the obviousness standard accounts for public policy concerns regarding efficient law enforcement and recognizes this Court's endorsement of the doctrine of assumption of risk. Last, a proper application of the obviousness standard supports a finding of constitutionality, while the circuits that reject the standard have facts inapposite to the case at bar. Thus, this Court should affirm.

Finally, the Fourteenth Circuit properly affirmed the district court's exclusion of extrinsic evidence to impeach the character of a deceased hearsay declarant. First, under a plain reading of the Rules, Rule 608(b) limits the type of extrinsic evidence available to absent hearsay declarants under Rule 806. Second, regardless of the Court's interpretation of the Rules, the broad discretion afforded to trial courts on evidentiary expertise should decide this issue. Thus, this Court should affirm the Fourteenth Circuit.

STANDARD OF REVIEW

In reviewing a lower court's ruling on a motion to suppress evidence, this Court should review it *de novo*. *See United States v. Malagerio*, 49 F.4th 911, 915 (5th Cir. 2022). This Court should review questions of law *de novo* and findings of fact—such as where an arrest takes place—for clear error. *See id; United States v. Watson*, 273 F.3d 599, 602 (5th Cir. 2001). Since the Government prevailed at the district court, an appeals court "view[s] the evidence in the light most favorable" to the Government. *See Malagerio*, 49 F.4th at 915.

The Court reviews evidentiary rulings under the highly deferential abuse of discretion standard. *See Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008). "Deference" to district courts is "the 'hallmark of abuse of discretion review.'" *Id.* Under the abuse of discretion standard, the Court would only overrule a district court's evidentiary ruling "if it based its ruling

on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 386 (1990). When the district court bases its reasoning on "a permissible interpretation" of the Rules, then appellate courts should defer to its discretion. *See, e.g.*, *United States v. Sokolow*, 91 F.3d 396, 402 (3d Cir. 1996).

ARGUMENT

I. Under *Payton v. New York*, agents Herman and Simonson's request, given from outside the cabin, for Petitioner to exit the cabin followed by a warrantless arrest was permissible pursuant to the Fourth Amendment.

Under *Payton v. New York*, Herman and Simonson's conduct was permissible under the Fourth Amendment because they remained outside Petitioner's cabin throughout the encounter and arrested him after he voluntarily exited. The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Thus, the Fourth Amendment expressly "indicates with some precision the places and things encompassed by its protections." *Florida v. Jardines*, 569 U.S. 1, 6 (2013). Among that list, "the home is first among equals." *Lange v. California*, 594 U.S. 295, 303 (2021). To protect a man's right to be free from government intrusion, this Court found in *Payton v. New York*, "the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." 445 U.S. 573, 585 (1980).

Despite *Payton's* clear language, circuits are split as to whether *Payton* is violated only by an officer's physical entry to effectuate a warrantless arrest. *Gaddis v. DeMattei,* 30 F.4th 625, 633 (7th Cir. 2022) (collecting cases). The Sixth, Ninth, and Tenth Circuits read *Payton* broadly and employ the legal fiction of "constructive entry"—an entry effectuated by officer's use of coercive tactics to compel an occupant to exit from their dwelling—to find a *Payton* violation. *See Fisher v. City of San Jose*, 475 F.3d 1049, 1065 (9th Cir. 2009); *United States v. Reeves*, 524 F.3d 1161, 1165 (10th Cir. 2008); *United States v. Saari*, 272 F.3d 804, 808 (6th Cir. 2001); *United States v. Morgan*, 743 F.2d

1158, 1166–67 (6th Cir. 1984); *United States v. Allen*, 813 F.3d 76, 81 (2d Cir. 2016) (regarding it as a legal fiction) . However, based on *Payton*'s explicit language and matters of public policy, this Court should join the Fourteenth Circuit in aligning with the Fifth, Seventh, and Eleventh Circuits who read *Payton* narrowly to prohibit only physical entry. *McClish v. Nugent*, 483 F.3d 1231, 1242 (11th Cir. 2007)*; Knight v. Jacobson*, 300 F.3d 1272, 1277 (11th Cir. 2002); *United States v. Berkowitz*, 927 F.2d 1376, 1386–88 (7th Cir. 1991); *United States v. Carrion*, 809 F.2d 1120, 1128 (5th Cir. 1987).

Applied here, Herman and Simonson did not violate the Fourth Amendment under *Payton* because they never crossed the threshold—even by an inch—when they arrested Petitioner *outside* his cabin. Petitioner does not challenge there was probable cause for the arrest, and the Government does not argue there was any exigent circumstances justifying the warrantless arrest. R. at 53. Thus, the only question this Court has to answer is if the officer's conduct ran afoul of *Payton v. New York*. For reasons that follow, this Court should answer no. Since *Payton* is only concerned with physically crossing the threshold, the claimed coercion should not impact the conclusion this Court should reach. *See Payton*, 445 U.S. at 585. Even if this Court chooses to adopt the constructive entry doctrine, the agent's conduct was not sufficiently coercive to constitute a constructive entry. Herman and Simonson, ununiformed and carrying standard tools, introduced themselves and asked Petitioner to exit his cabin for the purposes of investigation. R. at 11; R. at 52. When he declined, they continued the conversation from outside, subsequently developing probable cause for his arrest. R. at 11–12; R. at 22. Once probable cause was found, they firmly requested that he come outside, with their hand on their weapons in case they "needed to use it". R. at 23–26. After Petitioner complied and reached the bottom of the stairs, they arrested him. R. at 23. Under these facts, compared to other cases, this did not amount to coercion. Thus, this Court should affirm the Fourteenth Circuit.

A. The constructive entry doctrine, as it is, is textually and rationally unsupported.

To protect "the sanctity of a man's home and the privacies of life," this Court found that the "*physical entry* of the home is the chief evil against which the wording of the Fourth Amendment is directed. *Payton*, 445 U.S. at 585 (emphasis added). Indeed, "in none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home." *Id*. at 589. The warrant requirement properly mitigates this chief evil. *Id*. at 586. Thus, it is axiomatic that "searches and seizures inside a home without a warrant are presumptively unreasonable." *Id*. In *Payton*, there were two cases that involved physical entry into a defendant's home. *Id*. at 576. In one case, the defendant was not home, so the officers broke into his home. *Id*. at 577–78. Once inside, they found a .30 caliber shell in his home, which subsequently led to his arrest and conviction. *Id*. In the other case, the defendant's minor child answered the door, and the officers saw the defendant sitting in his bed, entered and arrested him. *Id.* at 578. Both defendants were convicted of felonies. *Id.* at 579.

In reversing the New York Court of Appeals and finding the authorizing statute unconstitutional, this Court held that the Fourth Amendment "prohibits the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest." *Id*. at 576. Finding unique privacy interests within the physical dimensions of a home, this Court announced the general rule that "the Fourth Amendment has drawn a firm line at the entrance to the house," crossable only if accompanied by a warrant or exigent circumstances. *Id*. at 590. Because the officers physically crossed that line to effectuate an arrest, this Court found the Fourth Amendment was violated. *Id.* at 603.

1. Payton's plain language and its progeny apply only to physical intrusions.

Thus, chief amongst the reasons for rejecting the constructive entry doctrine is that *Payton's* plain language does not support it. In *Payton*, this Court was concerned with the officers' warrantless *entry*, not the arrest. *See Id*. at 585–90; Brief for Appellant at *7–8, *People v. Gillam*, 734 N.W.2d 585 (Mich.

2007). Indeed, "*physical entry* is the chief evil against which the wording of the Fourth Amendment is directed. . . [and] the "threshold may not reasonably be *crossed*" without a warrant or exigent circumstances; *Payton*, 445 U.S. at 585 (emphasis added); *Kyllo v. United States*, 533 U.S. 27, 40 (2001) (*Payton* created a bright-line rule regarding physical entry); Brief for Appellant at * 7–12. As such, "the Court. . . clearly created a firm line delimiting a zone of privacy defined by 'the unambiguous *physical* dimensions of an individual's home.'" *McClish*, 483 F.3d at 1241–42. Thus, by *Payton*'s explicit terms, only "*physical entries*" to effectuate an arrest trigger the warrant requirement. *Id*.; *Payton*, 445 U.S. at 590; 3 Wayne R. LaFave, *Search & Seizure* § 6.1(e) (6th ed. 2025).

As such, a successful *Payton* challenge turns exclusively on the location of the officers during the effectuation of an arrest. *See e.g. Knight*, 300 F.3d at 1277; *Berkowitz*, 927 F.2d at 1386; *Carrion*, 809 F.2d 1128. Indeed, as the Eleventh Circuit found, the "firm line at the entrance of the home" is more than "some rhetorical or linguistic flourish;" it is a bright-line rule this Court made to protect the privacy interests of those who reside in it. *McClish*, 483 F.3d at 1243 (quoting *Kyllo*, 533 U.S. at 40). If law enforcement physically crosses this threshold more than an inch without a warrant or exigent circumstances, it is intolerable under the Fourth Amendment. *Kyllo*, 533 U.S. at 37 (internal citation omitted); *see McClish* 483 F.3d at 1247 (finding an officer's brief reach past the threshold to violate *Payton's* explicit limitation).

Since *Payton*, this Court has repeatedly reaffirmed *Payton's* focus on physical entries. *See. e.g., Lange*, 594 U.S. at 303; *Kirk v. Louisiana*, 536 U.S. 635, 636 (2002); *New York v. Harris*, 495 U.S. 14, 18 (1990) ("This special solicitude was necessary because "'physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.'"); *Steagald v. United States*, 451 U.S. 204, 212 (1981); *Kyllo*, 533 U.S. at 37 ("any *physical* invasion. . . the home, 'by even a fraction of an inch,' was too much) (emphasis added)); *McClish*, 483 F.3d at 1241–43. Despite this

Court "establishing [that] the Fourth Amendment protects people, not places" and removing "property rights [as]. . . the sole measure of Fourth Amendment violations," it has remained steadfast in its focus on physical trespass when it concerns entries for the purpose of arrest. *See McClish*, 483 F.3d at 1241–43; *Carpenter v. United States*, 585 U.S. 296, 304 (2018). This steady commitment in the face of *Lange, Carpenter,* and *Katz* correctly implies that property and privacy are nonexclusive foci of the Fourth Amendment. *See Jardines*, 569 U.S. at 5 ("*Katz*. . . does not subtract anything from the Amendment's protections 'when the Government *does* engage in [a] physical intrusion of a constitutionally protected area,'"); *Soldal v. Cook County*, *III.*, 506 U.S. 56, 64 (1992) ("no suggestion that this shift in emphasis had snuffed out the previously recognized protection for property under the Fourth Amendment.).

Numerous circuits find that no *Payton* violation occurs if the officer remains outside the residence throughout the encounter since the threshold was not crossed. *See Knight*, 300 F.3d at 1277; *McKinney v. George*, 726 F.2d 1183, 1188 (7th Cir. 1984); *Carrion*, 809 F.2d at 1128; *United States v. Whitten*, 706 F.2d 1000, 1015 (9th Cir. 1983); *See United States v. Botero*, 589 F.2d 430, 432 (9th Cir. 1978). For example, in *Knight*, alleged *Payton* was violated when he claims he was arrested in his home after he complied with the officer's request to exit the residence, given from outside the residence. 300 F.3d at 1277. After finding summary judgment based on qualified immunity proper, the Eleventh Circuit held that "*Payton*. . . drew the line at the home's entrance." *Id.* As such, "Payton keeps the officer's body outside the threshold, not his voice." *Id.* Further, given the restriction's physical focus, the court found that *Payton* "does not prevent law enforcement from telling a suspect to step outside his home and then arresting him without a warrant." *Id*. Therefore, if that is the extent and nature of the entry, "the officer never crosses 'the firm line at the entrance to the house.'" *Id*.

The circuits also find no *Payton* violation when officers communicated from outside that he was under arrest as no breach of privacy has occurred. *See Berkowitz*, 927 F.2d at 1387; *McKinney*,

726 F.2d at 1188; *Carrion*, 809 F.2d at 1128; *Whitten*, 706 F.2d at 1015; *Botero*, 589 F.2d at 432. In *Berkowitz*, officers went to a defendant suspected of stealing government documents and said he was under arrest while outside. 927 F.2d at 1379–80. After the defendant complied, the officers went inside to help him retrieve his coat and keys and discovered the stolen documents. *Id*. Because there was an issue of fact as to when the order was given, the Seventh Circuit reversed the trial court's denial of an evidentiary hearing. *Id*. However, the Seventh Circuit found that "*Payton* prohibits only a warrantless entry into the home, not a policeman's use of his voice to convey a message of arrest from outside the home. . . .[nor] a person. . . surrendering to police at his doorway. *Id.* at 1386. Further, when officers assert from outside that a defendant is under arrest, it found that "the person's privacy interest in the home" is not breached. *Id.* at 1387. Instead, an arrestee forfeits the privacy to his home "if the person recognizes and submits that authority." *Id.* Even when an arrest is completed on the very doorway of the dwelling, no *Payton* violation occurs from a privacy perspective. *McKinney*, 726 F.2d at 1188 (holding no *Payton* violation when defendant was arrested outside); *Carrion*, 809 F.2d at 1128 (holding no *Payton* violation when defendant was arrested at doorway); *Botero*, 589 F.2d at 432 doorway arret was reasonable). Indeed, if a defendant "knowingly exposes to the public," they are "not in an area where [they have] any expectation of privacy." *United States v. Santana*, 427 U.S. 38, 42 (1976).

Here, Herman and Simson never crossed the *Payton* threshold. The trial court found—a conclusion this Court should examine only under clear error and review in the light most favorable to the Government—that Petitioner was arrested outside the cabin, at the bottom of the steps. *See Watson*, 273 F.3d at 602 (viewed in light most favorable to the Government, trial court's factual finding defendant voluntarily exited his home and was arrested outside was not "clearly erroneous or influenced by an incorrect view of law", and no independent corroboration by the defendant); R. at 23, 55. After asking Petitioner to step outside so they could continue their investigation, Petitioner

willingly stepped outside of the cabin. R. at 23. It was only then, and when he reached the bottom of the steps, that the agents arrested him. R. at 23. Throughout the encounter, except to knock on the door, the agents never so much as crossed the cabin steps, thus never crossing "the firm line at the entrance to [his] house." *Payton*, 445 U.S. at 590 R. at 23, 24. Although they requested him to step outside—but never explicitly or impliedly said he was under arrest—such a request is insufficient to find a violation of *Payton*. *See Berkowitz*, 927 F.2d at 1387; *Knight*, 300 F.3d at 1277; *but see Allen*, 813 F.3d at 81 (finding *Payton* was violated when defendant was arrested while inside his home and officers remained outside). Thus, since the agents never physically crossed the threshold to effectuate the arrest, this Court should affirm the Fourteenth Circuit's finding that *Payton* was not violated.

2. This Court should decline to follow the constructive entry doctrine as it is unworkable, needlessly complex, and overbroad.

Also, this Court should decline Petitioner's and Judge Kim's invitation to adopt the constructive entry doctrine because it is unworkable, needlessly complex, and overbroad. Despite *Payton*'s clear language, some circuits recognize the "constructive entry" doctrine, a legal fiction that finds an officer can effectively enter a dwelling through coercive tactics, causing an occupant to exit his home. *See Allen*, 813 F.3d at 81 (collecting cases from the Sixth, Ninth, and Tenth Circuits). To those circuits, "the location of the arrestee," not the officers, is the core focus of "whether an arrest occurs within a home." *Id.* at 81. As such, if the conduct of the officers is such that an objectively reasonable person would conclude they may not terminate the encounter, then officers have effectively arrested that person even while remaining physically outside. *See Morgan*, 743 F.2d at 1164. Thus, the entry inquiry turns on the extent of coerciveness used by the officer to get the person to exit their dwelling. *See e.g. Morgan*, 743 F.2d at 1164. This Court should decline to align with these circuits.

In many respects, the constructive entry doctrine lacks a workable rationale. First, it unjustifiably overburdens courts and law enforcement. *Allen*, 813 F. 3d at 88. Since the arrest inquiry

"already presents close fact-finding issues for the district courts, including another factor analysis would "multiply the difficulties of applying the rule," requiring "courts to 'employ[] metaphysical subtleties to resolve Fourth Amendment challenges. *Id.* (internal citations omitted). By further complicating the inquiry, clear-cut rules regarding permissible conduct become impossible to form, depriving law enforcement of "clear guidance through categorical rules." *See Riley v. California*, 573 U.S. 373, 398 (2014); *Id*.; *Duncan v. Storie*, 869 F.2d 1100, 1102 (8th Cir. 1989) ("unwise to become preoccupied with the exact location of the individual in relation to the doorway."). Indeed, "[i]f police are to have workable rules, the balancing of the competing interests . . . 'must in large part be done on a categorical basis—not in an ad hoc, case-by-case fashion by individual police officers.'" *Id.* (internal citations omitted).

Apart from its practical issues, its internal rationale clashes with *Payton*. LaFave, *supra* at § 6.1(e). Under the *Payton* rule, "the warrant requirement makes sense only in terms of the *entry* rather than the arrest." *Id.* Since in-home arrests are not inherently "more threatening or humiliating than a street arrest," an arrest effectuated without physical entry and only through the individuals exit from the residence should be dispositive even in the absence of a warrant. *Id*.

Finally, the constructive entry doctrine in its current form and application lends itself to being significantly overbroad. *See Reeves*, 524 F.3d at 1172 (Tymkovich, J., concurring). It should be clear that when a uniformed officer is simply persistent in gaining entry, an arrest or seizure does not result. *Id.* ("While a police visit to someone's home may include uniformed officers who are persistent in their efforts to speak with a resident ("open the door, we need to talk to you. . . , the coercion inherent in such an encounter does not necessarily rise to the level of an arrest."). However, the doctrine implies any show of authority from an officer—even slight ones—"constitutes an arrest [or seizure].") *See id*. This would be true under either the categorical or totality of the circumstances approach. *See e.g.*,

United States v. Warford, No. 20-CR-1208 JCH, 2022 WL 17620770, at *25 (D.N.M. Dec. 13, 2022) (observing the categorical and totality of the circumstances approaches and how they conflict.). The Second Circuit exemplified this issue when it found that "exerting the authority of the police to require a suspect to leave his home to be arrested is a sufficient 'constructive' entry to require a warrant,'" even though it found a *Payton* violation independent of the doctrine. *See Allen*, 813 F.3d at 88–89. Thus, the doctrine could imbue every police-citizen interaction with coercion sufficient to trigger a seizure or arrest, leading to a constructive entry. *See Reeves*, 524 F.3d at 1172.

B. Even if this Court chooses to adopt the constructive entry doctrine, the agent's conduct severely fell short of coercion.

Even if the Court chooses to adopt the constructive entry doctrine, Herman and Simonson's conduct did not amount to coercion. Under the constructive entry doctrine, an officer constructively enters a person's dwelling if they "engage in actions to coerce the occupant outside of the home" and then arrest them. *Allen*, 813 F.3d at 81. Specifically, "[c]oercive police conduct is 'such a show of authority that [the] Defendant reasonably believed he had no choice to comply.'" *United States v. Grayer*, 232 F. App'x 446, 450 (6th Cir. 2007). In such circumstance, the officer "accomplishes the same thing and achieves the same effect as an actual entry"—an arrest of the Defendant. *Id.* Uniquely, an arrest, under the constructive entry doctrine, focuses on the location of the arrestee at the time of arrest. *See Morgan*, 743 F.3d at 1161–67.

As such, the constructive entry doctrine draws on arrest and seizure jurisprudence. *See Reeves*, 524 F.3d at 1167. "An arrest [or seizure] requires either physical force, or where that is absent, submission to the assertion of authority." *See e.g. id.*; *California v. Hodari D.*, 499 U.S. 621, 626 (1991). If based on an assertion of authority while a defendant is at home, "the appropriate inquiry is whether a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter." *See Reeves*, 524 F.3d at 1168; *see e.g., Florida v. Bostick*, 501 U.S. 429, 436 (1991).

Relevant factors include, but are not limited to, "threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled." *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Otherwise, if under *all* the circumstances the conduct does not rise to a level of coercion such that the Defendant would not feel free to terminate the encounter, no violation of the Fourth Amendment nor constructive entry occurs. *See id*.

Critically, merely being outnumbered, facing unformed and ununiformed officers, and numerous requests to leave the home fail to constitute constructive entry per se. *See United States v. Thomas*, 430 F.3d 274, 277 (6th Cir. 2005); *Grayer*, 232 F. App'x 450; *United States v. Vaneaton*, 49 F.3d 1423, 1427 (9th Cir. 1995); *People v. Gillam*, 734 N.W.2d 585, 591 (2007). For instance, two officers asking a defendant to step outside immediately preceding an arrest is not inherently coercive. *See Thomas*, 430 F.3d at 278; *Grayer*, 232 F. App'x at 450. In such situations, the request does not render a defendant's decision to leave the protection of the house "[un]willing[] and [in]voluntary[]" *Grayer*, 232 F. App'x at 450.). Even state courts have concluded that numerous attempts to get the defendant to come outside from uniformed and ununiformed officers were not considered coercive. *Gillam*, 734 N.W.2d at 591.Indeed, an occupant who opens the door to speak to officers has no obligation to allow them entry. *See Kentucky v. King*, 563 U.S. 452, 470 (2011).

Numerous circuits find extreme and excessive shows of force constitutes a constructive entry. *See e.g., United States v. Maez*, 872 F.2d 1444, 1450 (10th Cir. 1989). The traditional hallmarks of a constructive entry are "drawn weapons, raised voices, [and] coercive demands on the part of the police." *Thomas*, 430 F.3d at 278. In *Maez*, the Tenth Circuit found that ten FBI agents surrounding the defendant's trailer, brandishing their firearms, and using a loudspeaker to order him outside constituted "extreme coercion" supporting a constructive entry. 872 F.2d at 1452. Numerous circuits reached

similar conclusions of constructive entry or seizure when overwhelming number of officers aimed spotlights at a residence, guns drawn, loudly ordering an occupant to come out, and making threats. *See United States v. Nora*, 765 F.3d 1049, 1052–54 (9th Cir. 2014) (over twenty officers); *United States v. Saari*, 272 F.3d 804, 806–07 (6th Cir. 2001) (brandished firearms and four officers); *United States v. Creighton*, 639 F.3d 1281, 1289 (10th Cir. 2011) (threat); *Morgan*, 743 F.3d at 1161–67; *Sharrar v. Felsing*, 128 F.3d 810, 819 (3d Cir. 1997), *abrogated on other grounds by Saintil v. Borough of Carteret*, 2024 WL 3565308 at * 8 (3d. Cir. 2024); *United States v. Al-Azzawy*, 784 F.2d 890, 893 (9th Cir.1985) (surrounding drawn weapons and order to exit trailer). Rarely do circuits find constructive entry, seizure, or arrest absent "extreme coercion." *See e,g.*, *Allen*, 813 F.3d at 888–9l; *Reeves*, 524 F.3d at 1168–69 (finding constructive entry after consistent loud knocking and police identifying themselves early in the morning); *United States v. Quaempts*, 411 F. 3d 1046, 1048 (9th Cir. 2005) (finding seizure after defendant was presented with a brandished firearm and firm request to exit his bed); *United States v. Flowers*, 336 F.3d 1222, 1226 n.2 (10th Cir. 2003) (opening of the door was not voluntary after firmly being asked to exit residence at night.).

Here, the traditional hallmarks of a constructive entry are entirely lacking. Herman and Simonson, not in uniform, arrived at Petitioner's cabin to follow up on an investigation and introduced themselves as agents after Petitioner opened the door. *See Giliam*, 734 N.W.2d at 591; R. at 25, 29. From speaking with Petitioner, the Agents asked Petitioner to exit his cabin to arrest him. R. at 22. The lack of communicating the intent to arrest is irrelevant. *See Thomas*, 430 F.3d at 278; *Knight*, 300 F.3d at 1277. The agents, though with their firm tone and hands on their weapons, asked Petitioner to exit his cabin to continue their investigation. R. at 11–12, 22. Next, the agents waited for Petitioner to reach the ground before arresting him. R. at 23, 53. The agents never drew their weapons, made coercive demands of Petitioner, threatened him, surrounded his home, shone lights over his cabin, or ordered

him outside in an overly aggressive manner. *Cf. Maez*, 872 F.2d at 1450; *Felsing*, 128 F.3d at 819; *Nora*, 765 F.3d at 1052; *Saari*, 272 F.3d at 806–07; *Creighton*, 639 F.3d 1289. As such, Petitioner never faced "extreme coercion" or excessive shows of force commonly associated with a constructive entry compelling his exit. *Cf. Maez*, 872 F.2d at 1451. In fact, insufficient facts were present to override Petitioner's "willing[] and voluntary[]" request to "leave the protection of the house, thus no constructive entry resulted. *Grayer*, 232 F. App'x at 450. A contrary conclusion would "needlessly broaden[] the constructive entry doctrine." *Reeves*, 524 F.3d at 1172 (Tymkovich, J., concurring).

The cases Petitioner relies on are inapposite. Petitioner was not overwhelmingly outnumbered, threatened, confronted with brandished firearms, or confronted with overly coercive tones from the agents. *Cf. Maez*, 872 F.2d at 1450; *Felsing*, 128 F.3d at 819; *Nora*, 765 F.3d at 1052; *Saari*, 272 F.3d at 806–07; *Creighton*, 639 F.3d at 1289. He was never explicitly or implicitly informed of his arrest prior to leaving his home; it was subsequent. *Cf. Quaempts*, 411 F.3d at 1046; *Allen*, 813 F.3d at 88–89. Further, the Agents did not confront him in the middle of the night nor did they wish to gain entry; it was at 4:00 PM, and for the purposes of investigation. *Cf. United States v. Jerez*, 108 F.3d 684, 690 (7th Cir. 1997); *Flowers*, 336 F.3d at 1226 n. 2. Thus, because the officers physically and constructively remained outside the threshold, this Court should affirm the Fourteenth Circuit. Therefore, the notebook found on Petitioner seized incident to that arrest was properly admitted at trial.

II. Petitioner's Fourth Amendment rights were not violated when Ristroph did not inquire further into the ownership of the closed container in light of this Court's Fourth Amendment jurisprudence, prevailing public policy concerns, and guidance from the sister circuits.

This Court should join the Second, Seventh, and Fourteenth Circuits in holding that law enforcement must inquire further about a closed container's ownership pursuant to a third party's consensual search of a shared residence *only* when they have positive knowledge of ownership or when the container exhibits a socially recognized manifestation of privacy such that it becomes obvious the

property does not belong to the consenting party. Generally, the Fourth Amendment prohibits warrantless searches and seizures within the home. U.S. Const. amend. IV. However, this Court has recognized an exception for searches performed pursuant to an individual's consent. *Schneckloth v. Bustamonte*, 412 U.S. 218, 219 (1973). The same applies to consent given by third parties who possess common authority over the property through mutual use or joint access. *United States v. Matlock*, 415 U.S. 164, 171 (1974). More recently, this Court has extended an exception to third parties who consent to the search of property that they may not actually use, so long as it was objectively reasonable to believe they did. *Illinois v. Rodriguez*, 497 U.S. 177, 186 (1990). This objective belief is known as "apparent authority." *Id.* at 187.

This Court has not addressed whether apparent authority extends to the search of a closed container within a shared residence when law enforcement obtains a co-occupant's consent without inquiring further into the container's ownership. *See* R. at 62. Answering this question has caused "appreciable entropy among the circuits." *United States v. Taylor*, 600 F.3d 678, 686 (6th Cir. 2010) (Kethledge, J., dissenting). Consistent with this Court's mandate of objective reasonableness, the Second and Seventh Circuits have correctly extended a co-occupant's consent to closed containers, absent those that obviously do not belong to the consenting party. *See United States v. Snype*, 441 F.3d 119, 136 (2d Cir. 2006); *United States v. Melgar*, 227 F.3d 1038, 1041–42 (7th Cir. 2000). As such, law enforcement does not have an affirmative obligation to further inquire about the ownership of containers unless they have "reliable information that the container [was] not under the authorizer's control." *Melgar*, 227 F.3d at 1041.

By contrast, the Sixth and D.C. Circuits have adopted a standard that sanctions further inquiry by law enforcement when they encounter any ambiguity—however slight—as to the container's ownership. *See Taylor*, 600 F.3d at 681; *United States v. Peyton*, 745 F.3d 546, 554 (D.C. Cir. 2014).

This standard should be facially rejected, as it (1) is ignorant to the precedent of this Court regarding the nature of consent, the prescribed standard of objective reasonableness, and society's recognition of manifested expectations of privacy; (2) excessively limits the capacity of law enforcement to act objectively and efficiently and ignores any assumption of risk by individuals; and (3) would have incorrectly forced law enforcement in the case at bar to engage with the sort "metaphysical subtleties" of Reiser's consent that this Court counsels against. *Frazier v. Cupp*, 394 U.S. 731, 740 (1969). Therefore, this Court should affirm the Fourteenth Circuit's denial of Petitioner's motion to suppress.

A. This Court endorses consensual searches, permits law enforcement to make reasonable mistakes, and recognizes that certain containers manifest heightened expectations of privacy.

This Court has consistently echoed that the "touchstone of the Fourth Amendment is reasonableness." *Florida v. Jimeno*, 500 U.S. 248, 250 (1991). Not all "state-initiated searches and seizures" are prohibited, rather the Fourth Amendment "merely proscribes those which are *unreasonable*." *Id.* (emphasis added). This Court, in *Schneckloth*, articulated that "there was nothing constitutionally suspect" in a person voluntarily consenting to the search of their own property. 412 U.S. at 232 (constitutionalizing the idea of actual authority to consent); *see also Jimeno*, 500 U.S. at 250–51. Indeed, "the community has a real interest in encouraging consent, for the resulting search may yield necessary evidence for the solution and prosecution of crime." *Schneckloth,* 412 U.S. at 243. It follows that with the ability to voluntarily consent comes the ability to modify the scope or withdraw said consent. *Id*. at 222. When addressing scope, this Court asks, "what would the typical reasonable person have understood by the exchange between the officer and the suspect?" *Jimeno*, 500 U.S. at 251. When applied to personal property, like containers, if the suspect's consent reasonably extends to it, "the Fourth Amendment provides no grounds for requiring a more explicit authorization." *Id*. at 252. This foundational precedent makes clear that consent to search is well-recognized, encouraged, entirely within the consenting party's discretion, that its scope turns on objective reasonableness, and that the

Fourth Amendment does not require that any ambiguity be resolved with further inquiry. *See id.* The Fourteenth Circuit's approach aligns with this precedent, while the Sixth and D.C. Circuits' approach requires law enforcement to go beyond reasonable judgment and cure any ambiguity they face.

Objective reasonableness applies equally to third parties consenting with apparent authority. *See Rodriguez*, 497 U.S. at 184. In *Rodriguez*, this Court reasoned that "because many situations which confront officers in the course of exercising their duties are more or less ambiguous, room must be allowed for some mistakes on their part." *Id*. at 186. As a result, the apparent authority doctrine permits police to search homes when "they reasonably (though erroneously) believe[d] that the person who has consented to their entry is a resident of the premises." *Id*. Again, the Fourth Amendment demands reasonableness, not flawlessness. *See id.*[1] Requiring law enforcement to take additional "affirmative steps to confirm the actual authority of a consenting individual whose authority was apparent" would entirely diminish the purpose of apparent authority. *See Georgia v. Randolph*, 547 U.S. 103, 122 (2006). Under this Court's rationale in *Randolph*, the Fourth Amendment should not permit law enforcement to make reasonable mistakes about authority to consent yet simultaneously demand further inquiry when dealing with marginally ambiguous closed containers. Precedent from this Court firmly suggests that further inquiry is only required when a "man of reasonable caution in the belief that the consenting party" did not have authority over the premises. *See Rodriguez*, 497 U.S. at 188.

Furthermore, this Court's precedent regarding varying expectations of privacy suggests that certain types of containers, by their nature, exhibit characteristics of "obvious" ownership. *See Jimeno*,

[1] In establishing apparent authority, this Court provided several examples of this Court justifying reasonable, but mistaken, law enforcement action. *See Rodriguez*, 497 U.S. at 184 (if a magistrate issued a search warrant for a home based on reasonably reliable but inaccurate information, the "owner of that house suffers one of the inconveniences we all expose ourselves to as the cost of living in a safe society; he does not suffer a violation of the Fourth Amendment"); *Maryland v. Garrison,* 480 U.S. 79, 107 (1987) (upheld the search of the entire floor of a building that was divided into two units, holding that it was "objectively understandable and reasonable" for law enforcement to fail to realize the overbreadth of the warrant); *Hill v. California*, 401 U.S. 797, 798–99 (1971) (upheld a search incident to arrest when law enforcement arrested the wrong person, and held that "the officers' mistake was understandable and the arrest [was] a reasonable response").

500 U.S. at 251–52 (holding that "it is very likely unreasonable to think that a suspect, by consenting to the search of his trunk, has agreed to the breaking open of a locked briefcase within the trunk, but it is otherwise with respect to a closed paper bag"). To be deemed constitutionally protected, the Fourth Amendment requires individuals to manifest an expectation of privacy on the place or thing to be searched, and society must reasonably recognize that expectation. *See Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring). In fact, "dispositive weight" is accorded to a fellow occupant's manifestation of privacy "when he expresses it." *Randolph*, 547 U.S. at 121–22. This Court has held that containers with locks, seals, wraps, specified labels, or the like, fall under a "general class of effects in which the public at large has a legitimate expectation of privacy." *United States v. Jacobsen*, 466 U.S. 109, 114 (1984) (extending heightened expectation of privacy to "letters and other sealed packages"); *see also Walter v. United States*, 447 U.S. 649, 658 (1980) (extending heightened expectation of privacy to securely wrapped and sealed packages and "an ordinary locked suitcase").

Several circuits have also assigned greater Fourth Amendment protection to containers with socially accepted manifestations of privacy. *See United State v. Block*, 590 F.2d 535, 541 (4th Cir. 1978) (distinguished implicit privacy expectations between locked containers and unlocked containers); *United States v. Harrison*, 679 F.2d 942, 947 (D.C. Cir. 1982) (upholding the search of cardboard boxes that were unsealed, untaped, closed only by "criss-crossed" flaps, and had no label demonstrating ownership); *United States v. Rodriguez*, 888 F.2d 519 (7th Cir. 1989) (holding that a wife did not have authority to consent to the search of her husband's unlocked briefcase that was labeled "Mike"). So, a consenting third party's apparent authority should extend to all closed containers within a shared living space, so long as they are not locked, sealed, or labeled in a way that suggests a greater expectation of privacy. *See Snype*, 441 F.3d at 136. A blank, unsealed cardboard box certainly does not manifest any expectation of privacy, particularly when placed at the base of a stairwell in a shared living room. *See*

R. at 14, 17; *United States v. Harrison*, 679 F.2d 942, 947 (D.C. Cir. 1982) (finding the husband's box was stored in an unlocked and open area of the basement where wife also stored items). This Court should adopt the Second and Seventh Circuit's approach because it values the efficacy of freely given consent, prescribes an objective reasonableness test that aligns with the "touchstone of the Fourth Amendment," and correctly considers individual manifestations of privacy. *Jimeno*, 500 U.S. at 250.

B. The obviousness standard properly balances efficient and effective law enforcement with individuals' assumption of risk.

This Court should adopt the obviousness standard because it promotes quick and efficient searches and strikes the proper balance between effective law enforcement and an individual's assumption of risk. In *Randolph*, this Court recognized that reasonableness does not require law enforcement to determine the consent of potentially objecting co-tenants before acting on permission previously conferred. 547 U.S. at 122. Indeed, it would "needlessly limit the capacity of the police to respond to ostensibly legitimate opportunities…[and] every cotenant consent case would turn into a test about the adequacy of the police's efforts." *Id*. Deciding otherwise would "impose a requirement, time consuming in the field and in the courtroom, with no apparent systemic justification." *Id.* The obviousness standard accounts for these policy concerns in the context of closed containers. *See Melgar*, 227 F.3d at 1042 ("It would mean that [police] could *never* search closed containers within a dwelling (including hotel rooms) without asking the person whose consent is being given *ex ante* about every item they might encounter").

Individuals also have an interest in "quick thorough search[es] without lingering over every enclosed space." Frank J. Stretz, *An Objective Solution to an Ambiguous Problem: Determining the Ownership of Closed Containers During a Consensual Search*, 61 DPLLR 203, 235 (2011). The ill-founded ambiguity approach "requires innumerable inquiries" that inevitably delay law enforcement and may frustrate a consenting individual to the point of terminating the search in its entirety. *Id*.; *but*

cf. Schneckloth, 412 U.S. at 243. The obviousness standard, on the other hand, allows law enforcement to make reasonable, objective, and efficient decisions, retrieve any evidence, and remove themselves from the property. Stretz, *supra* at 235.

Furthermore, the ambiguity approach ignores the policy justifications surrounding assumption of risk as it pertains to third party consent. In *Matlock*, this Court reasoned that two individuals sharing in property "assumed the risk" that the other might allow someone else to look inside of it. 415 U.S. at 171; *see also United States v. Davis*, 967 F.2d 84, 88 (2d Cir. 1992) ("One who shares a house or room or auto with another understands that the partner may invite strangers–that his privacy is not absolute…a principle that does not depend on whether the stranger…turns out to be an agent or another drug dealer"). This is particularly true, as it was here, when individuals take no "special steps" to protect their property from the scrutiny of others. *See United States v. Bass*, 661 F.3d 1299, 1306 (10th Cir. 2011) (holding that a husband assumed the risk of a search when he left a zipper bag lying on the floor of their shared living room). In accordance, this Court's recognition of the doctrine of assumption of risk suggests that consensual searches of closed containers in shared living spaces are implicitly reasonable, absent an indication of "special steps" taken to otherwise protect the property. *See id.*

In stark contrast, the ambiguity approach forces law enforcement to abandon their reason and instead asks them to parse through the "metaphysical subtleties" of the use of shared property. *See Matlock*, 415 U.S. at 171 (illustrating this Court was "unwilling" to engage is such analysis). Indeed, consenting parties are in the best place to understand the scope of their authority, not law enforcement. Stretz, *supra* at 221. So, this Court should adopt the approach that properly values the consent of a well-situated occupant, in light of the risks assumed by another occupant leaving their property unattended in their shared space. *See id.* at 228.

C. In properly applying the obviousness standard, Petitioner's Fourth Amendment was not violated when Ristroph did not inquire further about the ownership of the box.

This Court should be strongly persuaded to affirm the Fourteenth Circuit's denial of Petitioner's motion to suppress and recognize the aforementioned doctrinal and policy justifications for adoption of the obviousness standard. Applied to the case at bar, there is no legal explanation to conclude that the cardboard box obviously and exclusively belonged to someone other than Reiser. The box was unsealed, untaped, and had no label indicating any kind of obvious ownership, much less a manifested expectation of privacy. R. at 14; *cf. Snype*, 441 F.3d at 136 (holding a knapsack and plastic bag with no identifying characteristics found alongside children's toys and a laptop hardly equated to obvious or exclusive ownership); *Harrison*, 679 F.2d at 947 (holding a wife had authority to consent to the search of her husband's boxes that were untaped, unsealed, unlabeled, and only closed by "criss-crossed" flaps). By leaving it at the bottom of the stairs in a common area, Petitioner assumed the risk that Reiser or someone else might have looked through his box of contraband. *See Bass*, 661 F.3d at 1306. Indeed, an indiscreet box is "hardly an object shouting 'Do Not Enter.'" *See id.* In addition, Petitioner's residence was being investigated pursuant to alleged conspiracy between multiple individuals. R. at 7–8. Accordingly, like *Snype,* the conspiratorial nature of the crime "necessarily raised the possibility that various persons in the apartment might share possessory interest in the items searched." *See* 441 F.3d at 136–37. Taken together, armed with Reiser's consent, it was objectively reasonable, under the obviousness standard, for Ristroph to search the box without additional inquiry.

If, however, this Court chooses not to formally adopt the obviousness standard, it should not be persuaded by inapposite precedent relied on by Petitioner. First, Petitioner and Reiser were romantic partners and resided together in the cabin. R. at 15; *see Bass*, 661 F.3d at 1306 (holding that two individuals living together in an intimate relationship "bespeaks a significant sacrifice of individual privacy). However, in *Waller* the defendant did not live with the third party and was merely storing a

suitcase at his apartment. *United States v. Waller*, 436 F.3d 838, 842 (6th Cir. 2005). In holding that the third party did not have apparent authority to consent to search the defendant's suitcase, the Sixth Circuit noted that expectations of privacy are "at their most intense" when property is stored temporarily at another's residence. *Id*. at 848. Petitioner was not a guest in his own home, and he was not storing the box there temporarily. Furthermore, unlike the third-party girlfriend in *Salinas-Cano* who affirmatively identified the defendant as the owner of a suitcase, Reiser made no such indication about the box. *United States v. Salinas-Cano*, 959 F.2d 861, 863 (10th Cir. 1992); R. at 16.

Second, the container itself and the location where it was found in the case at bar differ significantly from cases Petitioner relies upon. In *Taylor*, the male defendant had been storing his belongings in a spare bedroom of a third-party female's apartment. 600 F.3d at 679–80. Police later searched a men's shoebox covered by men's clothing, tucked deep into the corner of closet of that same bedroom. *Id*. These officers were not faced with ambiguity, they were faced with clear circumstances, in the form of an obvious label, that the female third-party was not the owner of the shoebox, likely even failing the obviousness standard. Similarly, in *Purcell*, the girlfriend told police that a backpack belonged to her and consented to its search. *United States v. Purcell*, 600 F.3d 953, 958 (6th Cir. 2008). However, after finding only men's clothing in the bag, officers nevertheless proceeded with the search. *Id.* Again, these officers were not faced with ambiguity; the clothes, by their very nature, obviously did not belong to the consenting party. *See id.* Here, nothing about the box's appearance or its surroundings indicated, or even suggested, that it belonged to someone other than Reiser. *See* R. at 14. Rather, it was entirely blank and placed in a common area that she and Petitioner shared. *See* R. at 15–16.

Petitioner's reliance on the Sixth Circuit's holding in *Peyton* is particularly concerning due to the unworkable standard applied, and even acknowledged, by the majority. *See* 745 F.3d at 553 ("this limitation on the scope of common authority might seem to put police in a bind"). There, a defendant

lived in a one-bedroom apartment with his grandmother. *Id.* at 549. The defendant slept in the shared living room space. *Id.* Law enforcement searched a blank, unsealed shoebox found near the defendant's bed and found drug paraphernalia. *Id.* at 549–50. In concluding that the grandmother did not have apparent authority to consent to search the container in her living room, the majority noted that "the drawers of the television stand" were unquestionably common use containers, despite only being separated by a matter of feet. *Id*. at 553. As the dissent opined, "how this measuring-stick jurisprudence is supposed to assist those who look to us for guidance wholly escapes me." *Id.* at 563 (Henderson, J., dissenting). Accordingly, if this Court does not choose to adopt the obviousness standard, it should not be for the reasons articulated in *Peyton*, as courts, law enforcement, and citizens alike would be left unsure how to apply this standard in practice.

Lastly, any argument Petitioner might raise regarding the scope of Reiser's consent is misguided. Petitioner and Reiser shared common use of the living room, kitchen, bathroom, and bedroom, all located on the cabin's first floor. R. at 15. Reiser explicitly conveyed this information to Ristroph and noted that Petitioner used the upstairs loft as an office space. R. at 15. As a result, Ristroph reasonably limited the search to the rooms on the lower floor. R. at 13. The stairwell connecting the two floors—and certainly the lower steps—was situated in the shared living room. R. at 17. As a result, it was more than reasonable for Ristroph to believe—even if mistaken—that Reiser could consent to search the area around the base of the stairs where the box was located. R. at 17; *see United States v. Marshall*, 348 F.3d 281, 285 (1st Cir. 2003) (holding a homeowner's apparent authority extended to a landing and stairwell that lead to a bedroom on the second floor rented by the defendant).

In conclusion, in light of this Court's continued recognition of an objectively reasonable Fourth Amendment, policy concerns balancing efficient and effective law enforcement with individual

assumptions of risk, and support from the circuits that have adopted the obviousness standard, this Court should affirm the Fourteenth Circuit's denial of Petitioner's motion to suppress.

III. The Court should apply the Third and D.C. Circuits' plain reading of Rules 806 and 608(b); nevertheless, deference to the district court's evidentiary ruling is appropriate.

This Court should find the Fourteenth Circuit properly interpreted the interaction between Rule 806 and 608(b) of the Federal Rules of Evidence and properly excluded Petitioner's extrinsic evidence. Alternatively, regardless of how this Court decides on the Rules of Evidence issue, it should still defer to the district court's exclusion of extrinsic evidence and affirm the Fourteenth Circuit. Under Rule 806 and 608(b) of the Rules, extrinsic evidence of specific instances of conduct of a hearsay declarant should not be admitted to impeach the declarant's character for truthfulness when the declarant is unavailable to testify at trial. Fed. R. Evid. 806; Fed. R. Evid. 608(b). The Court should join the Third and D.C. Circuits in this interpretation of the relationship between Rule 806 and 608(b) because it avoids over-reading the Rules, complies with canons of construction, and properly defers to the authority of district courts. *See United States v. Saada*, 212 F.3d 210, 222 (3d Cir. 2000); *United States v. White*, 116 F.3d 903, 920 (D.C. Cir. 1997).

A. Federal Rules of Evidence 806 and 608(b).

As a threshold matter, the parties do not dispute that the hearsay statement was admitted under Rule 803(2). R. at 43. The first two enumerated purposes of the Federal Rules of Evidence are to "administer every proceeding fairly" and "eliminate unjustifiable expense and delay." Fed. R. Evid. 102. A discussion of the Federal Rules of Evidence, therefore, should be construed with these purposes in mind. *See United States v. Hamilton*, 107 F.3d 499, 503 (7th Cir. 1997) (analyzing cross-examination considering the purpose of the Rules). To begin, Rule 806 allows the impeachment of a hearsay declarant. Fed. R. Evid. 806. In relevant part, it states: "the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had

testified as a witness." *Id.* advisory committee's note. Additionally, "the court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it." *Id.* Because the Rules treat a hearsay declarant as a witness, the opposing party may cross-examine the declarant with Rule 806-permitted evidence. *Id.*

However, the Rule prohibits "evidence of an inconsistent statement to impeach a witness unless he is afforded an opportunity to deny or explain." *Id.*; *see* Fed. R. Evid. 613(b). As such, "Rule 806 extends the privilege of impeaching the declarant of a hearsay statement but does not obliterate the rules of evidence that govern how impeachment is to proceed." *United States v. Finley*, 934 F.2d 837, 839 (7th Cir. 1991). However, Rule 608(b) limits the scope of Rule 806. Fed. R. Evid. 608(b). Under Rule 608(b), "extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness." *Id.* The proper vehicle for impeachment of a declarant's truthfulness under Rule 608(b) is cross-examination. *See id.* Absent cross-examination, Rule 608(b) prohibits extrinsic evidence for impeaching a witness's credibility. *Id.*

When a hearsay declarant cannot "deny or explain" an inconsistent statement, a tension between Rule 806 and 608(b) arises. *See* Fed. R. Evid. 806; Fed. R. Evid. 608(b). Therefore, a question of the proper connection of two Rules necessitates a discussion of canons of statutory interpretation. Courts first apply the plain meaning of the statute as enacted. *Stanley v. City of Sanford, Fla.*, 606 U.S. 46, 55–56 (2025). This Court does "not usually pick a conceivable-but-convoluted interpretation over the ordinary one." *Id.* Further, this Court has stated that its task is to "discern and apply the law's plain meaning as faithfully as we can, not 'to assess the consequences of each approach and adopt the one that produces the least mischief.'" *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 246 (2021). Finally, this Court has held that "policy concerns, moreover, cannot 'surmount the plain language of the statute.'" *Republic of Hungary v. Simon*, 604 U.S. 115, 138 (2025). However, should

this Court find ambiguity after a plain language analysis, it can resolve this issue on a procedural basis under the highly deferential abuse of discretion standard. *See Sprint/United Mgmt. Co. v. Mendelsohn*, 552 U.S. 379, 384 (2008); *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 386 (1990).

B. Third and Second Circuit dueling interpretations.

For example, extraordinary situations do not justify reading a provision into the plain meaning of the Rules. *See Saada*, 212 F.3d at 222. In *Saada*, the Third Circuit sided with a previous D.C. Circuit interpretation of the Rules and applied a plain language interpretation of Rule 806 and 608(b). *Id.* at 221; *White*, 116 F.3d 903 at 920. It determined that it is incongruent with the Rules to allow extrinsic evidence of specific instances of untruthfulness to impeach the deceased hearsay declarant. *Saada*, 212 F.3d at 222. The district court admitted the hearsay statement under the Rule 803(2) excited utterance exception and agreed to take judicial notice of extrinsic evidence detailing the declarant's disbarment and unethical conduct. *Id.* The Third Circuit found the district court relied on "implicitly" interpreting Rule 806 to modify Rule 608(b) rather than applying the plain meaning of the statute. *Id.* Even though the district court wanted to ensure that the declarant could be impeached despite him being deceased, the Third Circuit held that "the availability of one form of impeachment, under a specific set of circumstances, does not justify overriding the plain language of the Rules of Evidence." *Id.* at 221. The court recognized that there are "possible drawbacks" from denying the admittance of extrinsic evidence to impeach a deceased declarant. *Id.* at 222. However, infrequent drawbacks "may not override the language of Rule 808 and 608(b) and do not outweigh the reason for Rule 608(b)'s ban on extrinsic evidence in the first place." *Id.* Nevertheless, the Third Circuit illustrated the importance of its standard of review for evidentiary issues and upheld the district court's finding—even though its interpretation of the law was incorrect—because the district court's ruling did not prejudice the defendant. *See id.*

However, even if a court adopts an equitable reading of Rule 806 and 608(b), the broad discretion of the trial judge will control. *See United States v. Friedman*, 854 F.2d 535, 570 n.8 (2d Cir.

1988). In *Friedman*, the Second Circuit determined that Rule 806 should allow the introduction of extrinsic evidence about a hearsay declarant's lies to law enforcement about a fake suicide attempt to impeach his character. *Id.* at 570. The court reasoned that the limitations of Rule 608(b) on Rule 806 may not supersede the broad scope of Rule 806 "when the declarant has not testified . . . and resort to extrinsic evidence may be the only means of presenting such evidence to the jury." *Id.* at 570 n.8. Indeed, the Second Circuit did not overturn an exercise of the district court's discretion because the lower court's interpretation of Rule 806 was not "insensitive to the commands of Rule 806." *Id.* at 570. The statements, in short, were not outcome-determinative. *Id.* That is, the specific pieces of extrinsic evidence "were not attempts to shift blame" or prove an essential element of the defense. *Id.* Instead, even though the Second Circuit adopted a different interpretation of the Rules, it was nevertheless proper for the reviewing court to defer to the "broad discretion" of the district court and affirm its evidentiary ruling. *See id.* A doctrinal disagreement as to an unsettled point of the Rules is permissible—absent "insensitiv[ity] to the commands" of the law—and the solution is to defer to the breadth of the district court's discretion. *See id.*

C. The Third Circuit interpretation is a valid plain language application.

Here, the Court should affirm the Fourteenth Circuit's holding on the district court's evidentiary ruling for two reasons. First, the Fourteenth Circuit properly attempted to "discern and apply the law's plain meaning as faithfully as" it could in line with the Third and D.C. Circuits' plain meaning of the Rules. *See Mayor & City Council of Baltimore*, 593 U.S. at 246. Second, the Fourteenth Circuit was properly deferential to the district court's discretion not to admit extrinsic evidence of Copperhead's character following argument from both sides. *See* R. at 50. *Mendelsohn*, 552 U.S. at 384.

First, the plain meaning of Rule 806 indicates that impeachment of a hearsay declarant is permissible by the same extrinsic evidence rules applied to witnesses. *See* Fed. R. Evid. 806. After all, a hearsay declarant "is in effect a witness." *See id.* advisory committee's note. The plain meaning of

Rule 608(b) limits the permissible extrinsic evidence for witness impeachment. *See* Fed. R. Evid. 608(b). On its face Rule 608(b) functions to constrain Rule 806. Fed. R. Evid. 608(b). Additionally, here, it ensures the Rules help "administer every proceeding fairly" by ensuring Copperhead will not be subject to posthumous character impeachment in open court without the opportunity to respond. *See* R. at 47. *See* Fed. R. Evid. 102.

Additionally, should this Court overrule the district court's discretion and admit the academic dishonesty letter and job application, it would run afoul of both Rule 608(b) and Rule 613. Fed. R. Evid. 608(b); Fed. R. Evid. 806. Rule 613 specifically prohibits admitting "extrinsic evidence of a witness's prior inconsistent statement *until after* the witness is given an opportunity to explain or deny the statement and an adverse party is given the opportunity to examine the witness about it." R. at 9–10. Fed. R. Evid. 613(b) (emphasis added). Rule 806 does not include this specific provision, which, read in concert, indicates that the omission of the same provision was deliberate and that it should be limited by Rule 608(b). *See also* Fed. R. Evid. 806; Fed. R. Evid. 608(b). *Saada*, 212 F.3d at 221–22.

The *Friedman* court, along with Judge Kim on the Fourteenth Circuit expressed concern that "extrinsic evidence may be the only means of presenting such evidence to the jury." *See* R. at 61. *See* 854 F.2d at 570 n.8 (implying in dicta that Rule 806 might expand to include extrinsic evidence if extraordinary circumstances warrant it). This interpretation necessarily fails because it does not comply with this Court's approach to statutory interpretation, in that it is *not* the Court's task "'to assess the consequences of each approach and adopt the one that produces the least mischief.'" *See Mayor & City Council of Baltimore*, 593 U.S. at 246. Here, even though Copperhead's death has created an imperfect trial, this should not cause the Court to abandon its discipline in interpreting statutes because "policy concerns, moreover, cannot 'surmount the plain language of the statute.'" *See* R. at 46, 53. *See Republic of Hungary*, 604 U.S. at 138. In contrast to the Second Circuit's analysis, this Court does "not usually

pick a conceivable-but-convoluted interpretation over the ordinary one." *See Stanley*, 606 U.S. at 55–56. Thus, this Court should affirm the Fourteenth Circuit and adopt the plain meaning approach the Third Circuit took to interpret the restrictions Rule 608(b) places on Rule 806. *See Saada*, 212 F.3d at 221 (rejecting the district court "implicitly interpreting" the meaning of the Rules).

Second, the Court may elect to resolve the circuit split today, but regardless of the Court's interpretation of the Rules, it should still afford broad discretion to the district court and affirm the exclusion of extrinsic evidence. *See Mendelsohn*, 552 U.S. at 384. Here, the record indicates that the district court gave both sides the opportunity to articulate their interpretation of Rules 806 and 608(b) and then made a decision based on an interpretation of the Rules. *See* R. at 50. Further, the Fourteenth Circuit expressed an interpretation of Rule 806 and 608(b) in support of the district court that is grounded in principles of statutory interpretation and evidence law. *See* R. at 57–58. *See also Cooter* 496 U.S. 386; *Saada*, 212 F.3d at 220. Finally, the Fourteenth Circuit did not indicate any concerns as to the district court's application of the law or that exclusion of the academic dishonesty letter and job application constitutes a "clearly erroneous assessment of the evidence," such that it would trigger this Court to overturn the evidentiary ruling. *See* R. at 9–10. *See Cooter* 496 U.S. 386. Because the district court applied a permissible interpretation of the interplay between Rule 806 and 608(b) that did not impact the outcome of the trial, this Court should defer to the district court's evidentiary ruling. *See* R. at 50, 57. *See Cooter* 496 U.S. 386. Therefore, the evidence of specific instances of conduct of Copperhead was properly excluded.

Further, this case is like *Saada*. *See* 212 F.3d at 222. In *Saada*, the court grappled with a similar circumstance the Court faces today: the deceased hearsay declarant was unable to testify at trial just like Copperhead. *See id.* at 221. In *Saada*, opposing parties sought to introduce extrinsic evidence of the deceased declarant's unethical conduct, analogous to Copperhead's academic dishonesty letter and

job application. *See* R. at 9–10. *See Saada*, 212 F.3d at 221. To the *Saada* court, this admission to impeach a deceased hearsay declarant runs contrary to Rule 608(b)'s restrictions. *See* 212 F.3d at 222. Yet the Third Circuit was disciplined with its plain language interpretation of the Rules and did not succumb to policy analysis. *See id.* This Court should adopt the Third Circuit's approach in *Saada* because the *Saada* court applied this Court's plain language analysis to an extraordinary situation that is factually analogous to the one at bar. *See id.*

This case is not like *Friedman*. *See* 854 F.2d at 570. In *Friedman*, the Second Circuit contemplated whether to allow extrinsic evidence about the deceased hearsay declarant's fake suicide attempt to impeach his character, just like this Court is tasked with determining whether academic dishonesty and a job application should be allowed to impeach the deceased Copperhead. *See* R. at 9, 10. *See* 854 F.2d at 570. Even though the *Friedman* facts are analogous to the facts at bar, the Second Circuit reached a different conclusion from the Third Circuit because it was persuaded by the policy that "extrinsic evidence may be the only means of presenting such evidence to the jury." *Id.* at 570 n.8. The *Friedman* court's rationale is a stark departure from this Court's holding on the weight distribution between plain meaning and policy, and as such this Court should be cautious to break from its precedent on this discrete issue. *See id.*; *compare Republic of Hungary*, 604 U.S. at 138 (""policy concerns, moreover, cannot 'surmount the plain language of the statute.'"). Nevertheless, the Second Circuit reached the same holding as the Third Circuit because it deferred to the "broad discretion" of the district court, and that is the decision this Court should similarly reach today. *See Friedman*, 854 F.2d at 570.

In conclusion, this Court should affirm the Fourteenth Circuit because it properly interpreted the interaction between Rule 806 and 608(b) of the Federal Rules of Evidence and deferred to the plenary discretion that district courts enjoy on evidentiary issues. *See* Fed. R. Evid. 806; Fed. R. Evid. 608(b); *Mendelsohn*, 552 U.S. at 384. *Saada* and *Friedman*'s discussion of Rule 806 and 608(b) show

that there are multiple "permissible interpretations" of how the Rules oscillate in relation to impeaching unavailable hearsay declarants and therefore there is little ground to find for abuse of discretion. *See* 212 F.3d at 222; 854 F.2d at 570. Therefore, this Court should adopt the Third Circuit's interpretation of the Rules because it is most in line with this Court's plain meaning approach to statutory interpretation. *See, e.g.*, *Mayor & City Council of Baltimore*, 593 U.S. at 246. Alternatively, the Third Circuit's position is not the only justifiable ground for affirming the Fourteenth Circuit. Indeed, a narrow ruling that applies the standard of review and affirms the district court's decision would be consistent with all the Circuits' opinions. *See Saada*, 212 F.3d at 222; *Friedman* 854 F.2d at 570. Thus, this Court should affirm the Fourteenth Circuit and uphold the exclusion of extrinsic evidence to impeach Copperhead.

CONCLUSION

For the foregoing reasons, the judgment of the Fourteenth Circuit should be AFFIRMED.

Respectfully Submitted,

/s/ Team 5

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